

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUMMIT FAMILY MEDICAL PRACTICE, P.C.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 02-3783
THE PHILADELPHIA CONTRIBUTIONSHIP	:	
INSURANCE COMPANY,	:	
	:	
Defendant.	:	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT THE PHILADELPHIA CONTRIBUTIONSHIP
INSURANCE COMPANY'S OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL DISCOVERY

1. On July 31, 2002, this Honorable Court issued a Scheduling Order which required that all discovery be completed in this case by no later than September 30, 2002. Given the brief time for discovery in this case, Defendant issued Interrogatories to the Plaintiff on August 19, 2002. Plaintiff placed their Interrogatories in the mail on September 23, 2002.

2. On September 24, 2002, counsel for the Defendant forwarded a letter to Plaintiff's counsel seeking responses to those Interrogatories. That letter was attached to Plaintiff's Motion as Exhibit B.

3. At the time of the writing of the September 24 letter, Defendant had not yet received the requested discovery from Plaintiff. Counsel for the Defendant did not receive the Request

for Production of Documents and the Interrogatories propounded by the Plaintiff until September 25, 2002.

4. No Motion to shorten time within which to file responses to discovery was filed by the Plaintiff.

5. Under Rule 33(b)(3), a responding party has thirty (30) days within which to respond to Interrogatories. Accordingly, the responses to Plaintiff's Interrogatories are not due until October 25, 2002, and therefore, Plaintiff's Motion is not timely filed.

6. The Court's Scheduling Order could not have been made clearer. Discovery was to be completed by September 30, 2002. With respect to the strict application of the Court's imposed deadlines, the Court certainly made its intentions clear in the telephonic conference of September 23, 2002. In any event, the Plaintiff filed its discovery requests less than one week before the close of discovery. Curiously, Plaintiff has offered no explanation to this Court, or to the Defendant, as to why the discovery requests were so late in coming, particularly in light of the clarity of this Court's July 31 Order. Rather, Plaintiff simply seeks to create controversy where there is none. Defendant has abided by the Rules of this Court, as well as the Order of this Court. It is the Plaintiff who has failed to take this Honorable Court seriously.

7. Plaintiff's Interrogatories, attached to its Motion as Exhibit A, is also in violation of Rule 33(a) inasmuch as there are a total of 37 Interrogatories (not counting the subparts), which is far in excess of the number permitted under the Federal Rules of Civil Procedure.

8. Plaintiff's Motion is also defective inasmuch as no effort was made by Plaintiff's counsel to resolve the discovery dispute. Moreover, no certification of counsel was attached to Plaintiff's Motion as required under Rule 37 and under Local Rule 26.1(f).

WHEREFORE, Defendants requests this Honorable Court deny Plaintiff's Motion to Compel Discovery.

Respectfully submitted,
MOLDAWER & MARSHALL, P.C.

By: _____
John Marshall
451 Hungerford Drive
Suite 200
Rockville, MD 20850
(301) 340-3200

By: _____
Alfred J. Merlie, Esquire
The Pavilion
261 Old York Road
Suite 424
Jenkintown, PA 19046
(215) 884-4015

Counsel for Defendant